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 ACTION EA 15
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R 130840Z OCT 69
 FM AMCONSUL KUCHING
 TO SECSTATE WASHDC 589
 INFO AMEMBASSY KUALA LUMPUR
 AMEMBASSY SINGAPORE

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SUBJ: IMPLICATIONS OF DISPUTE OVER SARAWAK CONTINENTAL SHELF

1. SUMMARY: THE DEVELOPING FEDERAL-STATE DISPUTE OVER THE CONTINENTAL SHELF HAS SERIOUS ECONOMIC AND POLITICAL IMPLICATIONS FOR SARAWAK AND ITS RELATIONSHIP WITH THE CENTRAL GOVERNMENT. KUALA LUMPUR IS ATTEMPTING TO ESTABLISH ITS AUTHORITY OVER THE EXPLOITATION OF RESOURCES BEYOND THE THREE-MILE LIMIT AND THERE ARE INDICATIONS THAT IT INTENDS TO EXPLOIT ITS "EMERGENCY" POWERS AND THE WEAK "CARE-TAKER" GOVERNMENT IN KUCHING TO ACHIEVE ITS OBJECTIVE. THE FEDERAL GOVERNMENT IS SUPPORTED IN ITS CASE BY SABAH.

THE LEGAL QUESTION ITSELF IS MOOT, BUT THE PRESENT STATE GOVERNMENT WOULD SEEM TO HAVE NO CONSTITUTIONAL POWER TO COMMIT SARAWAK TO ANY AGREEMENT ON THIS MATTER. THE PRESENT ALLIANCE LEADER

IN THE STATE COULD CONCEIVABLY MAKE A DETERMINED STAND ON THIS ISSUE

BUT MORE LIKELY THEY WILL ACCEPT KUALA LUMPUR'S POSITION IN RETURN FOR MINOR CONCESSIONS. IF SO, ANTI-MALAYSIA SENTIMENT WHICH IS ALREADY PREVELANT AMONG THE CHINESE AND EDUCATED NATIVES OF SARAWAK WILL GROW. AT THE SAME TIME THE NOC COULD BE FURTHER TEMPTED TO WIN ACCEPTANCE BY SARAWAK OF OTHER NATIONAL POLICIES SUCH AS THOSE IN EDUCATION AND LANGUAGE. (END SUMMARY).

2. CHIEF MINISTER TAWI SLI AND THREE OF HIS MINISTERS RETURNED TO KUCHING OCTOBER 12TH FOLLOWING NEGOTIATIONS IN KUALA LUMPUR ON

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FEDERAL GOVERNMENT INTENTION TO EXTEND APPLICATION OF CONTINENTAL SHELF ACT 1966 TO SARAWAK. TAWI SLI TOLD PRESS THAT NOTHING FINAL HAD BEEN DECIDED. HE DESCRIBED ISSUE "AS LITTLE BIT OF DISPUTE WITHIN THE FAMILY" BUT HE SAID IT WAS VERY IMPORTANT MATTER AND "IT IS RIGHT FOR OUR PEOPLE TO KNOW" ABOUT IT.

3. CHAIRMAN OF STATE OPERATIONS COMMITTEE HARUN ARIFFIN IN PUBLIC STATEMENT SAID THIS QUESTION WAS ONLY "NORMAL AND MINOR ISSUE" AND SHOULD NOT BE "BLOATED UP" AS IT WOULD DIVIDE THE COUNTRY AND WOULD ALLOW "A TI-NATIONAL ELEMENTS" TO CREATE DISSENSION. HARUN SAID THAT WHATEVER DECISION WAS ARRIVED AT IT MUST BE ACCEPTED AS BENEFITING CITIZENS OF MALAYSIA AS A WHOLE. HARUN EXPLAINED FEDERAL GOVERNMENT POSITION WHICH HE DESCRIBED AS PROPER AND REASONABLE. HARUN SAID THAT OTHER 12 STATES INCLUDING SABAH HAD ACCEPTED THIS POLICY, WHICH INDICATED THAT IT WAS A "DEMOCRATIC AND WISE DECISION". ANY WEALTH WON BY THE FEDERAL GOVERNMENT, HARUN ALSO POINTED OUT, WOULD BE PLOUGHED BACK TO THE STATE FOR DEVELOPMENT.

4. ACTING STATE ATTORNEY GENERAL JEMURI BIN SERJAN, WHO ACCOMPANIED DELEGATION TO KUALA LUMPUR, TODAY OUTLINED STATE'S POSITION TO CONSULATE OFFICER. IN 1954, JEMURI SAID, SARAWAK "ORDER IN COUNCIL" DECREED THAT TERRITORY OF SARAWAK INCLUDED CONTINENTAL SHELF, AND OIL MINING ORDINANCE OF 1958 FURTHER ESTABLISHED AUTHORITY OF SARAWAK GOVERNMENT OVER EXPLORATION AND EXPLOITATION OF THE SHELF. SARAWAK RETAINED THIS AUTHORITY WHEN IT JOINED MALAYSIA IN 1963, JEMURI ARGUED, AS ARTICLE ONE OF THE MALAYSIAN CONSTITUTION PROVIDES THAT THE TERRITORIES OF THE INDIVIDUAL STATES OF THE FEDERATION "ARE THE TERRITORIES COMPRISED THEREIN IMMEDIATELY BEFORE MALAYSIA DAY", AND ACCORDING TO THE MALAYSIA AGREEMENT THE EXISTING LAWS OF THE BORNEO STATES CONTINUE IN FORCE PROVIDED THEY DID NOT CONTRAVENE THE CONSTITUTION. SARAWAK AND SABAH'S UNIQUE POSITION WAS CONFIRMED BY JEMURI SAID, BY THE CONTINENTAL SHELF ACT OF 1966 THE PREAMBLE OF WHICH STATES THAT THE PROVISIONS OF THE ACT ARE RESTRICTED TO WEST MALAYSIA.

5. FEDERAL GOVERNMENT POSITION IS THAT CONTINENTAL SHELF CONVENTION OF 1958 EXCLUDED TERRITORIAL CLAIMS TO SHELF BUT ESTABLISHED NATIONAL RIGHTS TO EXPLOITATION. THIS ISSUE THUS INVOLVES INTERNATIONAL RELATIONS, IT IS SAID, AND THEREFORE COMES UNDER FEDERAL AUTHORITY. ALSO ARTICLE 4 OF 1966 ACT STATES WITHOUT

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INFO AMEMBASSY KUALA LUMPUR

AMEMBASSY SINGAPBIE

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6. JEMURI SAID THAT KUALA LUMPUR HAS DRAFTER AGREEMENT TO BE CONCLUDED WITH SHELL TO COVER AREAS BEYOND THREE-MILE LIMIT AND THAT STATE GOVERNMENT WAS NOT INCLUDED AS PARTY TO THIS AGREEMENT. CENTRAL GOVERNMENT HAD ALSO INTENDED FORMALLY TO EXTEND 1966 ACT TO EAST MALAYSIA AND HAD REQUESTED CONCURRENCE OF STATE GOVERNMENT AS REQUIRED BY MALAYSIA AGREEMENT. JEMURI SAID ANOTHER LEGAL QUESTION WAS WHETHER "CARE-TAKER" CABINET HAD AUTHORITY TO CONCUR IN FEDERAL GOVERNMENT ACTION, OR EVEN TO CONCLUDE STATE'S OWN AGREEMENT WITH SHELL. CHIEF JUSTICE OF BORNEO HIGH COURT GAVE CONSULATE OFFICER HIS CONFIDENTIAL OPINION THAT PRESENT CABINET HAD CONSTITUTIONAL AUTHORITY ONLY FOR "DAY-TO-DAY AFFAIRS" AND THAT ANY FORMAL AGREEMENT IT MADE COULD CONCEIVABLY BE CHALLENGED BY NEXT ELECTED GOVERNMENT. HOWEVER, CHIEF JUSTICE NOTED THAT THERE WAS NO PRECEDENT FOR PROLONGED LIFE OF "CARE-TAKER" GOVERNMENT IN "EMERGENCY" AND CONSTITUTIONAL QUESTIONS WERE THUS AMBIGUOUS. JEMURI SAID ISSUE MIGHT EVENTUALLY GO TO FEDERAL COURT, OR KUALA LUMPUR MIGHT OFFER LIMITED AND PERHAPS TEMPORARY CONCESSIONS IN RETURN FOR SARAWAK'S CONCURRENCE IN EXTENSION OF 1966 ACT TO EAST MALAYSIA. NEW AGREEMENT WITH SHELL, HE NOTED, WOULD BE DELAYED UNTIL SOLUTION OF PROBLEM.

7. ASSISTANT STATE SECRETARY, LEO MOGGIE, TOLD CONSULATE OFFICER THAT THIS ISSUE HAD SERIOUS ECONOMIC AND POLITICAL IMPLICATIONS

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QUALIFICATION THAT FEDERAL GOVERNMENT WILL HAVE AUTHORITY OVER CONTINENTAL SHELF. FINALLY, IT IS ARGUED THAT THE FACT THAT SABAH HAS ACCEPTED FEDERAL GOVERNMENT POSITION CONFIRMS ITS VALIDITY. (ACCORDING TO ANOTHER STATE OFFICIAL, SARAWAK OFFICIALS INFORMALLY APPROACHED SABAH GOVERNMENT SOME MONTHS AGO AND PROPOSED JOINT POSITION ON THIS ISSUE, BUT NO REPLY EVER RECEIVED.)

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 FOR THE STATE. ONLY WAY SARAWAK CAN HOPE TO PROTECT ITS POSITION OFF THIS AND OTHER ISSUES, MOGGIE SAID, IS FOR ITS POLITICAL AND CIVIL SERVICE LEADERS TO MAKE A FIRM STAND AND CONFRONT THE FEDERAL AUTHORITIES. IF THE CHIEF MINISTER AND TEMENGGONG JUGAH THREATENED TO MAKE A UNITED FRONT WITH THE OPPOSITION IN AN OPEN FIGHT, MOGGIE SPECULATED, KUALA LUMPUR WOULD LIKELY OFFER AT LEAST A COMPROMISE. HOWEVER, MOGGIE WAS NOT OPTIMISTIC THAT LOCAL LEADERS WOULD PROVE THEMSELVES SO DETERMINED. TAWI SLI FELT STRONGLY ABOUT THE MATTER, MOGGIE SAID, BUT HE IS WEAK PERSONALITY, OTHER THREE IBAN MINISTERS HAVE NO NOTION AND LITTLE INTEREST IN WHAT IS AT STAKE AND THEY CAN BE BOUGHT OVER. THE THREE MOSLEM BUMIPUTRA MINISTERS WOULD PROBABLY SUPPORT THE FEDERAL GOVERNMENT IN THE END, AS WOULD PROBABLY ONE OR BOTH OF THE SCA CABINET MEMBERS. MOGGIE SAID HE SPENT TWO HOURS RECENTLY EXPLAINING SIGNIFICANCE OF THE MATTER TO MINISTER OF SARAWAK AFFAIRS JUGAH BUT IT IS HIGHLY UNCERTAIN WHETHER THE INDECISIVE AND ILLITERATE IBAN LEADER WILL BECOME EXCITED ABOUT THE ISSUE.

8. COMMENT: SARAWAK NOW FINDS ITSELF IN AN ISOLATED AND VIRTUALLY POWERLESS POSITION VIS A VIS THE FEDERAL GOVERNMENT AND THE HANDLING OF THE OFF-SHORE OIL ISSUE SUGGESTS THE INTENTION OF THE LATTER TO MAKE FULL USE OF THE SITUATION. THIS INCIDENT AS WELL AS THE RECENT INCREASE IN CUSTOMS DUTIES REFLECT KUALA LUMPUR'S FREQUENT DISREGARD FOR THE SPECIAL POSITION AND INTERESTS OF SARAWAK. THIS MOST RECENT DEVELOPMENT IS THE FIRST CASE IN WHICH KUALA LUMPUR HAS ATTEMPTED TO EXPLOIT THE "EMERGENCY" AND THE WEAK CARE-TAKER GOVERNMENT IN KUCHING IN ORDER TO BRING ABOUT A PERMANENT CHANGE WHICH WILL AFFECT THE FUNDAMENTAL INTERESTS OF SARAWAK. THE PRESENT ALLIANCE LEADERS IN THE STATE COULD CONCEIVABLY MAKE A DETERMINED STAND ON THIS ISSUE, BUT MORE LIKELY THEY WILL ACCEPT KUALA LUMPUR'S POSITION IN RETURN FOR MINOR CONCESSIONS. IF SO, ANTI-MALAYSIA SENTIMENT WHICH IS ALREADY PREVELANT AMONG THE CHINESE AND EDUCATED NATIVES OF SARAWAK WILL GROW. AT THE SAME TIME THE NOC COULD BE FURTHER TEMPTED TO WIN ACCEPTANCE BY SARAWAK OF OTHER NATIONAL POLICIES SUCH AS THOSE IN EDUCATION AND LANGUAGE. TAYLOR
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